

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Nodak Electric Cooperative, Inc.  
vs. Otter Tail Power Company  
Complaint**

**Case No. PU-11-654**

**AFFIDAVIT OF SERVICE BY CERTIFIED MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Cara DeSaye** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **1<sup>st</sup>** day of **November, 2011**, she deposited in the United States Mail, at Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed, containing a photocopy of:

**Complaint**

**Motion**

The envelopes were addressed as follows:

Bruce Gerhardson  
Otter Tail Power Company  
PO Box 496  
Fergus Falls MN 56532-0496

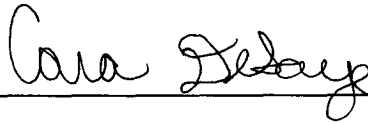
George Koeck  
PO Box 9156  
Fargo ND 58106-9156

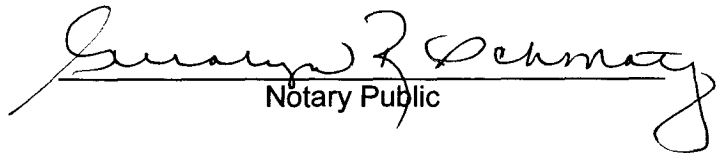
**Cert. No. 7010 3090 0002 4629 4355**

**Cert. No. 7010 3090 0002 4629 4331**

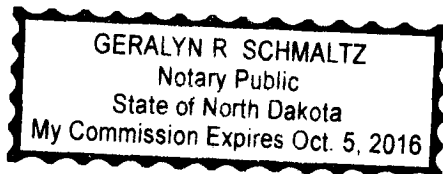
Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me  
this **1<sup>st</sup>** day of **November, 2011**

  
\_\_\_\_\_

  
\_\_\_\_\_  
Notary Public

SEAL



APPROVED

DATE 10-26-11

\$

## MOTION

October 26, 2011

**Nodak Electric Cooperative, Inc.  
vs. Otter Tail Power Company  
Complaint**

**Case No. PU-11-654**

I move the Commission find the October 10, 2011 complaint filed by Nodak Electric Cooperative, Inc. states a *prima facie* case, and serve the complaint on the Respondent, Otter Tail Power Company, in Case No. PU-11-654.

PJF

DONALD A. NEGAARD  
JAMES E. NOSTDAHL  
CAROL K. LARSON  
DAVID J. HOGUE  
REED A. SODERSTROM  
BRENT M. OLSON  
DEBRA L. HOFFARTH  
SCOTT M. KNUDSVIG  
RYAN D. SANDBERG  
MATTHEW H. OLSON

ATTORNEYS LICENSED IN  
NORTH DAKOTA  
MINNESOTA  
MONTANA

  
LAW OFFICES OF  
**PRINGLE & HERIGSTAD, P.C.**

2525 ELK DRIVE  
POST OFFICE BOX 1000  
MINOT, NORTH DAKOTA 58702-1000  
(701) 852-0381  
FAX (701) 857-1361  
E-mail: pringle@srt.com

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(1914-1983)  
MITCHELL H. MAHONEY  
(1929-1996)  
ROGER O. HERIGSTAD  
(1919-2003)  
MARK F. PURDY  
(1927-2011)

RECEIVED

OCT 11 2011

PUBLIC SERVICE COMMISSION

October 10, 2011

DARRELL NITSCHKE  
ND PUBLIC SERVICE COMMISSION  
600 EAST BOULEVARD – DEPT 408  
BISMARCK, ND 58505-0408

**Nodak Electric Cooperative vs Otter Tail Power Company  
Complaint under NDCC 49-03**

Nodak Electric Cooperative files the enclosed Complaint (original, seven copies, and one copy for Respondent) under NDCC 49-03-01.1, 01.4 and 05 and N.D. Admin. Code 69-02-02-02.

This complaint is related to Otter Tail's application case No. PU-11-542.

If the Commission were to accept Otter Tail's extreme argument that "Otter Tail's Notice of Withdrawal deprives the Public Service Commission of any further jurisdiction over the application for CPC&N" (Otter Tail's October 3 brief, p. 4), only Otter Tail's application would be affected. If Otter Tail's withdrawal of its application were to be accepted by the Commission as also effective to render ineffective Nodak's request for hearing on Otter Tail's application, Nodak's interest remains and may be asserted in a Complaint proceeding, under NDCC 49-03-01.4 and 05 and N.D. Admin. Code 69-02-02-02.

Nodak's complaint complements its request for a hearing in case no. PU-11-542 and its October 7, 2010 brief in that case. We believe the preferable procedure to address the issues raised by this complaint and by Otter Tail's application is a hearing on the application, including attention to the jurisdiction issue if it were raised by a party with standing.

We are not sending a copy of this Complaint to Otter Tail because we understand the Commission will do that, under N.D. Admin. Code 69-02-02-02.

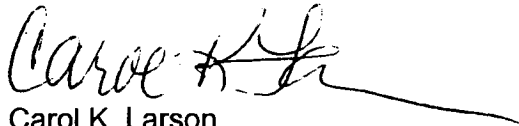
14 **PU-11-542** Filed: 10/11/2011 Pages: 5  
**Complaint**

1 **PU-11-654** Filed: 10/11/2011 Pages: 5  
**Complaint**

October 10, 2011  
Page 2

If you have any questions, please do not hesitate to contact me.

Yours truly,

A handwritten signature in cursive script, appearing to read "Carol K. Larson", with a long horizontal flourish extending to the right.

Carol K. Larson  
lat

Enclosures

cc: Gerad C. Paul, Senior Attorney – Assistant General Counsel, Minnkota Power  
Cooperative, Inc.

**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

Nodak Electric Cooperative, Inc.	)	
	)	
Complainant	)	<b>COMPLAINT</b>
vs.	)	
	)	
Otter Tail Power Company,	)	
	)	
Respondent.	)	<b>Case No.</b> _____

1. Nodak Electric Cooperative, Inc. (Nodak) is a "rural electric cooperative" under NDCC 49-03-01.5 subsection 4. Nodak is an interested electric cooperative corporation under NDCC 49-03-05.

2. Otter Tail Power Company (Otter Tail) is an "electric public utility" under NDCC 49-03-01.5 subsection 2. Its address is 215 South Cascade Street, PO Box 496, Fergus Falls, MN, 56532-0496.

3. Nodak alleges that Otter Tail threatens to and is about to begin the construction of an extension of its public utility plant and system in the NW¼ of Section 8, Township 151 North, Range 62 West, Benson County, North Dakota (the place to be served), without first obtaining from the Commission a certificate that public convenience and necessity require or will require such construction.

4. The place to be served is not located within the corporate limits of any municipality.

5. The place to be served is located in Nodak's service area.

6. Otter Tail's intended construction is shown by the Commission's records in its Case No. PU-11-542, including:

6a. On July 29, 2011, Otter Tail Power filed an application under NDCC 49-03 for authority to extend its service to the place to be served.

6b. On August 24, 2011, the Commission issued a Notice of Opportunity for Hearing.

6c. On September 19, 2011, Nodak requested a hearing on Otter Tail's application.

6d. On September 16, 2011, Otter Tail filed a "Notice of Withdrawal" of its application.

6e. On September 26, 2011, Nodak filed a response and request for hearing relative to Otter Tail's request to withdraw its application.

6f. On October 3, 2011, Otter Tail filed a reply, asserting its notice of withdrawal "deprives" the Public Service Commission of any further jurisdiction" over Otter Tail's application for authority to extend service, and asserting the Commission has no authority to hold a hearing on whether to permit Otter Tail to withdraw its application.

The gravamen of Otter Tail's documents in Case PU-11-542 is a prima facie showing that Otter Tail threatens and is about to begin the construction of an extension of its public utility plant and system to the place to be served without first obtaining from the Commission a certificate that public convenience and necessity require or will require such construction.

7. Otter Tail's construction of an extension of its public plant and system to the place to be served is a threatened violation of sections NDCC 49-03-01 through 49-03-01.5.

8. Nodak is ready, willing and able to provide electric service to the place to be served.

Therefore, pursuant to NDCC 49-03-01.1, 01.4 and 05, Nodak requests the Commission, with or without notice, to make its Order restraining, enjoining and requiring Otter Tail to cease and desist from constructing an extension of its electric public utility plant and system to the place to be served until the further Order of the Commission after due notice and hearing.

Dated this 10 day of October, 2011.

PRINGLE & HERIGSTAD, P.C.

By: 

Carol K. Larson - #04406  
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